

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHARLES LINTZ, Individually and On	:	Civil Action No. 1:08-cv-03536-WHP
Behalf of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
	:	
vs.	:	
	:	
AGRIA CORPORATION, et al.,	:	
	:	
Defendants.	:	
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JOSHUA R. LeBLANC, Individually and On	:	Civil Action No. 1:08-cv-03886-WHP
Behalf of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
	:	
vs.	:	
	:	
AGRIA CORPORATION, et al.,	:	
	:	
Defendants.	:	
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SANDY LODERMEIER, Individually and On	:	Civil Action No. 1:08-cv-04456-UA
Behalf of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
	:	
vs.	:	
	:	
AGRIA CORPORATION, et al.,	:	
	:	
Defendants.	:	
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NIJAT TONYAZ'S MEMORANDUM OF LAW IN FURTHER SUPPORT
OF HIS MOTION FOR APPOINTMENT AS LEAD PLAINTIFF AND
IN OPPOSITION TO THE GAO/LEWIS GROUP'S MOTION

Pending before the Court are two motions for appointment as lead plaintiff filed pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”). 15 U.S.C. §77z-1(a)(3)(B). In addition to the motion filed by Nijat Tonyaz (“Mr. Tonyaz”), a motion was also filed by Senquan Gao and Michael Lewis (“Gao/Lewis Group”). The PSLRA instructs courts to appoint as lead plaintiff the person the Court determines has the “largest financial interest” in the relief sought by the class and otherwise satisfies the requirements of Fed. R. Civ. P. 23 (“Rule 23”). *See In re Cendant Corp. Sec. Litig.*, 264 F.3d 201, 268-69 (3d Cir. 2001); *In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002). The Third Circuit has reasoned that, in most cases, “this determination will be relatively easy.” *Cendant*, 264 F.3d at 262. And so it is here.

The process for appointing a lead plaintiff begins with the court’s determination of which movant has the largest loss. *See Sofran v. LaBranche & Co.*, 220 F.R.D. 398, 402-03 (S.D.N.Y. 2004). Once that determination is made, it must then determine whether that movant satisfies the requirements of Rule 23. *Id.* “[T]he court’s initial [Rule 23] inquiry should be confined to determining whether such movants have stated a *prima facie* case of typicality and adequacy.” *Cendant*, 264 F.3d at 264. If the movant with the largest loss satisfies this *prima facie* Rule 23 inquiry – which “need not be extensive” – he is entitled to a presumption that he is the “most adequate plaintiff.” *Id.*; *see Sofran*, 220 F.R.D. at 402-03. If the other movants fail to adduce *evidence* sufficient to rebut that presumption, the Court must appoint the presumptively “most adequate plaintiff” as lead plaintiff. *See* 15 U.S.C. §77z-1(a)(3)(B)(iii)(II) (presumption “may be rebutted only upon proof”); *Ferrari v. Impath, Inc.*, 2004 U.S. Dist. LEXIS 13898, at *22 (S.D.N.Y. 2004) (PSLRA’s rebuttable presumption requires proof, not “red herring[s]” or “innuendo”).

Here, the papers filed with the Court reveal that Mr. Tonyaz has by far the largest financial interest in the outcome of this litigation:

PROPOSED LEAD PLAINTIFF	APPROXIMATE LOSS
(1) Mr. Tonyaz	\$987,000
(2) Gao/Lewis	\$82,000

See Sofran, 220 F.R.D. at 402. As indicated by his pleadings and certification, Mr. Tonyaz also satisfies Rule 23's typicality and adequacy requirements. *See* Memorandum of Points and Authorities in Support of Nijat Tonyaz's Motion for Consolidation of Related Actions, Appointment as Lead Plaintiff and Approval of Lead Plaintiff's Selection of Co-Lead Counsel at 5-6; *In re Fuwei Films Sec. Litig.*, 247 F.R.D. 432, 437 (S.D.N.Y. 2008) (finding Mr. Tonyaz qualified under Rule 23).

Accordingly, Mr. Tonyaz's motion for appointment as lead plaintiff and for approval of his selection of co-lead counsel should be granted and the Gao/Lewis Group's motion should be denied. *See In re Centerline Holding Co. Sec. Litig.*, 2008 U.S. Dist. LEXIS 36406, at *14 (S.D.N.Y. 2008).

DATED: June 27, 2008

Respectfully submitted,

COUGHLIN STOIA GELLER
 RUDMAN & ROBBINS LLP
 SAMUEL H. RUDMAN
 DAVID A. ROSENFELD
 MARIO ALBA JR.

s/ David A. Rosenfeld

 DAVID A. ROSENFELD

58 South Service Road, Suite 200
 Melville, NY 11747
 Telephone: 631/367-7100
 631/367-1173 (fax)

HOLZER, HOLZER & FISTEL, LLC
COREY D. HOLZER
MICHAEL I. FISTEL, JR.
1117 Perimeter Center West, Suite E-107
Atlanta, GA 30338
Telephone: 770/392-0090
770/392-0029 (fax)

[Proposed] Co-Lead Counsel for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 27, 2008.

s/ David A. Rosenfeld

DAVID A. ROSENFELD

COUGHLIN STOIA GELLER

RUDMAN & ROBBINS LLP

58 South Service Road, Suite 200

Melville, NY 11747

Telephone: 631/367-7100

631/367-1173 (fax)

E-mail: drosenfeld@csgrr.com

Mailing Information for a Case 1:08-cv-03536-WHP

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Jason Samuel Cowart**
jscowart@pomlaw.com
- **Fei-Lu Qian**
flqian@pomlaw.com
- **David Avi Rosenfeld**
drosenfeld@csgrr.com,e_file_ny@csgrr.com,amartin@csgrr.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

D. Seamus Kaskela
Schiffrein Barroway Topaz & Kessler, LLP
280 King of Prussia Rd.
Radnor, PA 19087

Richard A. Maniskas
Schiffrein & Barroway L.L.P.
280 King of Prussia Road
Radnor, PA 19087

David M. Promisloff
Schiffrein, Barroway, Topaz, & Kessler, LLP
280 King of Prussia Road
Radnor, PA 19087

AGRIA CORP.

Service List - 6/27/2008 (08-0084)

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Counsel For Defendant(s)

Corporate Legal Counsel
Agria Corporation
Two Park Place, Suite 2
Bronxville, NY 10708
914/337-1117

Counsel For Plaintiff(s)

Guri Ademi
Ademi & O'Reilly, LLP
3620 East Layton Avenue
Cudahy, WI 53110
414/482-8000
414/482-8001(Fax)

Evan J. Smith
Brodsky & Smith, LLC
240 Mineola Blvd., 1st Floor
Mineola, NY 11501
516/741-4977
516/741-0626(Fax)

Samuel H. Rudman
David A. Rosenfeld
Mario Alba, Jr.
Coughlin Stoia Geller Rudman & Robbins LLP
58 South Service Road, Suite 200
Melville, NY 11747
631/367-7100
631/367-1173(Fax)

Ramzi Abadou
Coughlin Stoia Geller Rudman & Robbins LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
619/231-1058
619/231-7423(Fax)

Corey D. Holzer
Michael I. Fistel, Jr.
Holzer Holzer & Fistel, LLC
1117 Perimeter Center West, Suite E-107
Atlanta, GA 30338
770/392-0090
770/392-0029(Fax)

Marc I. Gross
Jeremy A. Lieberman
Fei-Lu Qian
Pomerantz Haudek Block Grossman & Gross
LLP
100 Park Avenue, 26th Floor
New York, NY 10017-5516
212/661-1100
212/661-8665(Fax)

AGRIA CORP.

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Patrick V. Dahlstrom
Pomerantz Haudek Block Grossman & Gross
LLP
One North LaSalle Street, Suite 2225
Chicago, IL 60602-3908
312/377-1181
312/377-1184(Fax)

Richard A. Maniskas
D. Seamus Kaskela
David M. Promisloff
Schiffrin Barroway Topaz & Kessler, LLP
280 King of Prussia Road
Radnor, PA 19087
610/667-7706
610/667-7056(Fax)